statute provision exists in Iowa (Sec. 2074, Code of 1897), which provides: "No contract, receipt, rule or regulation shall exempt any railway corporation engaged in transporting persons or property, from the liability of a common carrier or carrier of passengers, which would exist had no contract, receipt, rule or regulation been made or entered into." It has been held under this statute that such contracts are void whether with or without consideration (*Brush* v. *Sabula, etc., Ry. Co.* (1876), 43 Ia. 554); and that a contract limiting the amount of recovery for loss of baggage is invalid, *Davis* v. *Chi. R. I. etc., Ry. Co.* (1891), 83 Ia. 744.

CONSTITUTIONAL LAW—GAME LAWS.—Respondent was convicted under an act making it unlawful for any person to have in possession any wall-eyed pike or pickerel weighing less than one pound each. He purchased 156 wall-eyed pike, the total number weighing 106 pounds, in Ontario, in the waters of which province the fish were lawfully caught, in order that he might perform a contract previously made, for their sale to a Boston fish merchant. He took the fish to Port Huron, Michigan, packed them for shipment, delivered them to an express company, and they were then seized by the state fish warden. *Held,* (OSTRANDER, J., dissenting), such statute is within the police power of the state and not in conflict with the interstate commerce clause of the federal constitution, although it prohibits having in possession fish of the prohibited size caught in foreign waters and brought into the state. *People* v. *Lassen* (1906), — Mich. —, 12 DETROIT LEGAL NEWS 857.

The respondent claims the statute applies only to fish caught in state waters, for otherwise it would conflict with the federal constitution. His contention is upheld in *People* v. *Buffalo Fish Co.*, 164 N. Y. 93 (1900), in which O'BRIEN, J., in construing a similar statute said: "The word 'possessed' obviously refers to those fish, the catching or killing of which is forbidden; that is to say, fish in the waters of this state." He says further: "In my opinion, the law has no reference or application to a case where the fish have been imported from a foreign country." See *Commonwealth* v. *Hall* (1880), 128 Mass. 410, holding that a statute providing that whoever, in the commonwealth, takes, kills, or has in his possession a woodcock during certain times of the year shall, upon conviction, be punished, etc., does not refer to woodcocks caught or killed in another state. See also *People* v. *O'Neil,* 71 Mich. 325; *Commonwealth* v. *Wilkinson,* 139 Pa. 298. However, in *People* v. *Buffalo Fish Co.*, supra, three judges dissented, including GRAY, J., who said: "The object of the statute was to protect certain fishes during the breeding season. * * * If they may be brought into the state within the close season here as articles of commerce, * * * the result would be to facilitate evasions of the law and to make detection difficult, if not impossible." If the statute expressly includes imported game, it is generally upheld. *People* v. *Bootman,* 180 N. Y. 1 (1904), and is no doubt constitutional. See "Lacey Act" (1900), 31 U. S. Stat. at Large, ch. 553. Also *State* v. *Shattuck* (1905), 104 N. W. Rep. 719 and 4 MICH. LAW REV. 236. But the facts in the principal case are somewhat different from those existing in the cases above cited in that here the fish were not sold nor intended to be sold in the state of Michigan. Here the fish were lawfully caught in Canada, lawfully purchased

there by the respondent with intent to transport them to Massachusetts, lawfully imported into the United States, and while in transit through Michigan, were seized by the game warden. Such action seems in violation of the interstate commerce clause of the federal constitution and, according to OSTRANDER, J., the statute was never intended to have application to facts like these. In *Railroad Co.* v. *Husen*, 95 U. S. 465-472, Mr. JUSTICE STRONG said: "While we unhesitatingly admit that the state may pass sanitary laws; * * * while it may prevent persons or animals suffering under contagious or infectious diseases * * * from entering the state; while * * * it may establish quarantine and reasonable inspection laws, it may not interfere with transportation into or through the state, beyond what is absolutely necessary for its self-protection. It may not * * * prohibit or burden either foreign or interstate commerce." See also *Bowman* v. *C. and N. W. Ry Co.*, 125 U. S. 465. It is difficult to see wherein the court could justify its decision under the "police power," for here the health, morals, or safety of the people of the state of Michigan were not in peril, for the fish were not to be consumed by them, neither was their future supply of good food endangered. The statute may be constitutional, but a question may arise as to whether or not it was rightly applied in this case.

CONSTITUTIONAL LAW—HABEAS CORPUS—FORMER JEOPARDY.—The defendant, charged with homicide near the boundary line between C. and N. counties, was tried and acquitted in C. county. *Held*, a subsequent attempt to try him for the same offense as having been committed in N. county, was a violation of Section 14 of Bill of Rights. *Ex parte Davis* (1905),— Tex. —, 89 S. W. Rep. 978.

The question arose on a writ of habeas corpus applied for by the defendant. As to the facts and circumstances necessary to permit the use of such writ, see *Ex parte Degener et al.*, 30 Tex. App. 566 (1891) and *Ex parte Kearby*, 35 Tex. Cr. R. 634 (1896). If the defendant has been tried and acquitted by a court of competent jurisdiction, the state can never again place him on trial for the same offense, no matter how irregular the procedure may have been. See *Mixon* v. *State*, 35 Tex. Cr. R. 458 (1896). The writ of habeas corpus does not perform the office of a writ of error or an appeal, *Ex parte Terry*, 128 U. S. 305 (1888), and a former conviction cannot be inquired into. See *In re Bogart*, Fed. Cases No. 1596 (1873). Neither is it the proper means to try the issue of a former acquittal, *State* v. *Klock*, 12 So. Rep. 307; and *Brill* v. *State*, 1 Tex. App. 152, nor can it issue to interfere with a lower court's proceedings within its jurisdiction. The real question to be determined is whether or not the court first trying the case was a "court of competent jurisdiction." Here the venue giving the District Court of C. county jurisdiction was proved and therefore its verdict and judgment exonerated the defendant from further prosecution by the District Court of N. county.

CONTRACT FOR SALE OF REALTY—RESCISSION—BRINGING ACTION NOT SUFFICIENT NOTICE OF RESCISSION.—Plaintiff vendee who has received nothing, but has parted with personal property under a contract for the sale of real